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Spates, Alfred, defendant.
United States vs. Alfred Spates.
Defence of the accused before a military commission...[Baltimore? 1863?]

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UNITED STATES

vs.

ALFRED SPATES.

Defence of the accused before a Military Commission, convened in Baltimore, Maryland, September, 1863.

The accused is charged with the violation of the Laws of War, as laid down in paragraph 86, of General Orders, No. 100, of the War Department, dated April 24th, 1863.

That paragraph, is as follows:

86. All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

This is the first charge.

The specification is, that the accused, on the 6th day of July, 1863, and on divers days before and after that date, did pass from within the lines of the United States Army, and without any proper authority or permission, unlawfully and traitorously did go within the lines of the Army, of the so called Confederate States, and into the midst of such Rebel Army, at or near Williamsport and Hagerstown, in Maryland; Martinsburg and Winchester, in Virginia, and other places in Maryland and Virginia, then in rebel occupation; and did hold intercourse with rebel authorities, and procure and receive from General Robert E. Lee, Commanding the Rebel Army, a written pass or permission, allowing the accused to pass in and out of the lines of the rebel army.

It is further alleged as a circumstance of aggravation, that the accused was, at the time, President of the Chesapeake and

Ohio Canal Company, and enjoyed confidential relations with the Government of the United States.

The second charge against the accused, is "Violation of the 57th Article of War."

That article is as follows:

"Whosoever shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a Court Martial."

There are two specifications under this charge.

The first is, that the accused between the first and twelfth days of July, 1863, at or near Williamsport and Hagerstown, in Maryland, and at or near Martinsburg and Winchester, in Virginia, did unlawfully and traitorously enter the lines of the Rebel army, and hold correspondence by private interviews, and protracted and secret conversations with the Rebel Generals Lee and Ewell, and with other persons in the rebel service.

The second specification under the second charge, is, that the accused between the first and fifteenth days of July, 1863, was engaged secretly in giving intelligence to the rebels, and did convey to them important intelligence between the dates aforesaid, at Williamsport and Hagerstown, in Maryland, at Martinsburg and Winchester, in Virginia, and at other places within the rebel lines.

These are the grave charges upon which the accused has been arraigned.

It is proper, in the beginning, to analyse carefully the language of paragraph 86, of General Orders, No. 100, which has been heretofore quoted.

The accused concedes that this paragraph states generally the true law of war; but it is equally certain that in an insurrectionary or civil war, like the present, this single paragraph cannot, by itself, be regarded as the exclusive law of war on the subject to which it relates.

But nevertheless, it is proper to see in the beginning precisely what the paragraph itself does set forth.

It says, that "all intercourse between the territories *occupied* by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases."

It is perfectly clear that this paragraph means by the word "occupied" in its application to territories, a complete military possession of the territories to which it refers. It does not matter whether the territory occupied by the hostile army is its own, or territory properly belonging to ourselves but invaded by that hostile army. So long as that particular section of the country is actually *occupied* by the military lines and forces of the enemy, it is not proper that those *military* lines should be crossed by a loyal citizen.

What is the reason of this?

It cannot be that intercourse between a loyal citizen of the District of Columbia and a loyal citizen of York, Pennsylvania, was illegal in June, 1863, because at that time there were scattered parties of rebels around York, passing and repassing on all the direct roads between York and the District of Columbia.

To hold such a doctrine would be to concede that the rebels might, by the use of mere outlying parties of cavalry, technically occupy great sections of country; and so prevent that intercourse between the invaded sections and those portions in the undisputed possession of the Armies of the United States, which might be essential to the safety of the loyal inhabitants of both sections.

What paragraph 86 really means is this.

That it is unlawful to hold intercourse with territories which are in the full and undisputed occupation of a hostile army; because this involves the necessity of crossing the actual military lines of the enemy without the permission of the Government; and amounts to a voluntary surrender, by a citizen so offending, of himself into the hands and control of the enemy.

But where such military lines of the enemy do not in fact exist at the point where intercourse was sought with a part of the invaded State; where there was no surrender by the person going into that section of the country of himself for the sake of holding such intercourse; not only is there no presumption of unlawfulness of intercourse under the laws of war, but there is, under such laws, a propriety and fitness in undertaking such journeys for many conceivable reasons.

It is proper to advise the inhabitants of the invaded country that the roads before them are really free and admit of their escape.

It is proper to remove from all such parts of the invaded country as may not actually be within the enemy's lines, such property as would conduce to his support and maintenance.

It is proper to take every precaution which prudence, ingenuity, or stategy can suggest for the preservation, within the invaded country of all those permanent works which are essential to the prosperity of the invaded country and are in danger of being destroyed. In a word the relations to each other of the inhabitants and citizens of an invaded State like that of Maryland, did not cease or change in any way upon the invasion of the rebel army in June last, except so long as certain portions of those inhabitants were, pending the invasion, within the actual defined military lines of the rebel army.

As these lines shifted from day to day, and left the loyal inhabitants outside of them, such loyal inhabitants so left outside were as free to communicate with each other and their Government at Washington as they ever were

The theory that the mere presence of a predatory band of rebels in the State of Maryland was sufficient to carry with it the consequences of a military occupation, would be to concede, that because a portion of rebel cavalry on the 29th day of June, 1863, or thereabouts, rode across Maryland from Pennsylvania and came near Baltimore City, that, therefore, the whole country between their main army at Gettysburg and Baltimore City was in the occupation of the rebels, which it assuredly was not.

It would be to concede that because Piney Run bridge, 32 miles from Baltimore, on the Baltimore & Ohio Rail Road and about one mile west of Sykesville, was burned by a party of rebel cavalry on Monday, June 29th, 1863, that therefore the whole country from that point west, including Frederick City, was in the occupation of the rebels, which it assuredly was not.

What little foundation in truth there is for such a theory, appears from the fact that this very Piney Run bridge was repaired by the Baltimore & Ohio Rail Road Company the next morning, June the 30th, 1863, in twenty-five minutes; and the mail train, freighted with mails and passengers for Frederick, went to Frederick on June the 30th, 1863, at 8.15 A. M. passing safely through to its destination; or at least being met at the

Monocacy Junction, about three miles from Frederick, by a train from Frederick, as is usually the case when communicating from Frederick City with a mail train.

So too, it is quite certain that the Rail Road trains ran thus to Frederick, on Wednesday, July 1st, 1863, on Thursday, July 2, 1863, and thus from day to day until Tuesday, July 7th, 1863, when not only did the trains run to Frederick with passengers, but troop trains for United States troops and containing such troops, ran from Baltimore to Sandy Hook, a point near Harpers Ferry.

Since July 7th, 1863, the trains on the Baltimore and Ohio Rail Road, between Frederick City and Baltimore, have run without interruption from the enemy.

The accused remarks here that the burden of proving that the line of Rail Road between Baltimore and Frederick was not within the rebel lines, but was within the lines of the United States during the time averred by these charges, ought not to be upon him in this trial.

He states, however, a fact, now historically known, and at all times known to the Government at Washington, when he says that the line of the Baltimore and Ohio Rail Road between Baltimore and Frederick City, and Frederick City itself, was not *occupied* by the rebels during the period of time covered by these charges, and that there never was, within such period, any objections to travel, by loyal citizens, between Baltimore and Frederick City.

He is entitled to the benefit of this fact, as fully as if it were proven by many witnesses.

It is perfectly true that the accused left Baltimore on Monday, June 29th, 1863, intending to take Miss Sally Roman from Baltimore to Hagerstown; and to go himself from Hagerstown to the line of the Canal at Dam No. 5. He thought, as did the Baltimore and Ohio Rail Road Company on that day, that the way was open for the train, which, it may be remarked, was a mail, as well as passenger train. On reaching Marriottsville, it was discovered that the Piney Run Bridge, a short distance beyond had been destroyed, and the train returned, as did the accused, Miss Roman, and all the other passengers, so far as the accused knows.

On the first day of July, 1863, the conviction of the accused that the road to Frederick was clear, was fully strengthened by the starting of two trains per day to Frederick City. He certainly had some reason to suppose that two trains per day would not be run through a country in the enemy's possession. He was satisfied, Martial Law having been declared on the preceding day, June 30th, 1863, that the trains would not have been allowed to go to Frederick on July the 1st, 1863, if there had been any military reason to the contrary.

It is in proof that the accused took every possible precaution which he could take to ascertain whether the road was clear from Frederick to Hagerstown on July the 1st, 1863, and that he only started upon his journey, after receiving from Col. George R. Dennis, of Frederick City, the fullest assurance that the road between Frederick and Hagerstown, was free from rebels, on that day.

It is further in proof that the accused was brought also to this conviction, by the fact that it was made known to him on the 28th day of June, 1863, by a refugee from Williamsport, Md., E. G. W. Stake, that the road from Hagerstown to Frederick, had been reported free from all rebels, by Mrs. Dorsey, who had just arrived in Baltimore, by that route.

It is further in proof, that the accused was confirmed in this conviction by the fact, that the said E. G. W. Stake, and others, loyal refugees from Hagerstown, [which they had left as Lee advanced into Maryland, from Virginia,] quitted Baltimore, to return to Hagerstown, in the full conviction of the safety of the step, on June 30th, 1863.

It is now proper to make some reference to the position and office which the accused occupied on the 1st of July, 1863, and which he had occupied since the year 1860.

This office furnishes the solution of the presence of the accused in Western Maryland on July the 1st, 1863.

It is necessary to refer to it because the charges and specifications set forth the fact as a circumstance of aggravation, that the accused was all this time the President of the Chesapeake and Ohio Canal Company.

The State of Maryland owns a controlling interest in the Chesapeake and Ohio Canal Company, and the President of that Company is elected by a direct vote of the Commissioners of Public Works of the State of Maryland, who are officers chosen by the people, under the provisions of the Constitution of that State, to exercise this duty of appointment among their other duties.

The accused had been connected with the Chesapeake and Ohio Canal for some time prior to his election to its Presidency, which took place in the year 1860.

The Commissioners by whom he was chosen, are men well known for their loyalty, one being at this time a Brigadier General in the service of the United States, another having been lately a Commissioner under the draft in the City of Baltimore, and the two others being private citizens, exercising the office of Commissioner of Public Works only, but being, as the accused has said, well known loyal men.

It would not be becoming in the accused, to state his own relations to the Government of the United States. They have been alluded to in the charges. If it were true that the accused had abused the confidence reposed in him, he would certainly merit the severest condemnation.

It is sufficient for the purpose of his defence to set forth the following paper which has been already offered in proof.

CHESAPEAKE AND OHIO CANAL.

Copy of an Order Issued by the Secretary of War, General McClellan, &c.

HEAD QUARTERS, ARMY OF THE POTOMAC,
October 24th, 1862.

CIRCULAR.

The following General Order from the War Department is re-published for the information of all concerned. The provisions of this order are still in force, and the boats of the Company will be allowed to pass through the lines of this Army, without hindrance, until otherwise directed.

By Command of Major General McClellan,

S. WILLIAMS,
Assistant Adjutant General.

Official:

JAS. A. HARDEE,
Lieut. Col., A. D. C., Act'g Ass't Adj't General.

GENERAL ORDERS, No. 44.

WAR DEPARTMENT,
Adjutant General's Office.
WASHINGTON, April 21, 1862.

All the lock-houses, boats, scows and other property belonging to the Chesapeake and Ohio Canal Company, on the line of said canal, now held, used or occupied by the United States officers or troops, will be forthwith given up and restored to the President of the said Company. All officers of the Army will respect Alfred Spates, Esq. as President of the said Company, and are hereby prohibited from interfering in any manner with him in the management of the canal; but are directed to give such aid and assistance as is consistent with the good of the service, in keeping it in repair, and removing all restrictions which have been imposed upon the boats navigating the said canal. The President of the said Canal Company is authorized to give all passes that may be required to be used on the canal, subject to the approval of the Commander of the District.

By Order of the Secretary of War:

L. THOMAS,
Adjutant General.

Official:

E. D. TOWNSEND,
Assistant Adjutant General.

The attention of the Commission is called to the fact that this order was in force during all the time covered by the charges and specifications, to which reference has been made, as appears by the letter of the Assistant Adjutant General, Hardie, dated August the 19th, 1863, which has been offered in evidence by the accused.

General Orders, No. 44, in themselves amount to, and have always been regarded by Officers of the United States Army, stationed in the region of country through which the Canal passes, as a permit from the War Department, authorizing the said Alfred Spates to go wherever he might deem it necessary to go for the management of the Canal, within the lines of the United States.

Such was the position of the accused, when in the month of June, and somewhere about the 15th of June, 1863, the rebels made their appearance in force in the neighborhood of the Chesapeake and Ohio Canal, at points between Sharpsburg and Williamsport, Maryland.

It is perfectly well known that the rebels crossed into Maryland, at that time, and on their way over, destroyed portions of the Chesapeake and Ohio Canal.

It is known to the Government, at Washington, that this Canal has always been used as a means of conveying military supplies, when the Baltimore and Ohio Rail Road was disabled by the enemy.

It was known that the rebels, on their crossing, had destroyed certain portions of the Rail road track, and it became, therefore, very desirable to ascertain the extent to which the Canal had been damaged, and to provide the means for its necessary repair.

The letter of Lloyd Low, the Superintendent of the Cumberland Division of the Canal, satisfied the accused that no very grave injury had been inflicted on that portion of the work.

The Cumberland Division extends from Cumberland, Md., to Dam No. 6, a point about ten miles west of Hancock, Md.

The accused had, however, no information as to the condition of the Canal between Dam No. 6, and Dam No. 5, which is about seven miles north of west from Williamsport, Md., and about thirteen miles west of Hagerstown.

He was anxious to inspect its condition in person; and it was undoubtedly his duty, as President of the Chesapeake and Ohio Canal, and as General Superintendent of that work, to go there for that purpose, unless there was some strong military reason to the contrary.

He did not give himself any concern as to the condition of the Rail road, between Baltimore and Frederick City, because he had abundant reason to believe and know that the way was clear between these points.

It is not pretended that when the accused arrived in Frederick City, on the evening of July 1st, 1863, the condition of the country offered any obstacle to his journey to Hagerstown, that being his only route to Dam No. 5. The whole rebel army, it is well known, was then rapidly concentrating for battle, at Gettysburg, in Pennsylvania, if it had not already so concentrated. There is no proof that there was any organized force of rebels, or any stragglers even of their army, on the road between Frederick City and Hagerstown, on that day. Those in Frederick City, who were likely to be best informed, saw no risk in the undertaking. And the accused, not imagining even that he was doing any thing, except his duty, drove over in a

carriage that evening, to Hagerstown, taking charge of the same young lady, whom he had before unsuccessfully endeavored to convey to her home.

The evidence is clear, that the accused had the right to suppose that all that section of Western Maryland, was open to him; because it is in proof that E. G. W. Stake, of Williamsport, Md., a refugee, and other refugees from Hagerstown, driven from their homes by the advance of Lee's army into Maryland, had returned by the way of Frederick, to their homes, on the day preceding, June 30th, 1863, thinking the country, about their homes, really clear from rebels, as in fact it was.

It cannot be pretended that Hagerstown was in rebel occupation, when the accused arrived there on the night of July the 1st, 1863. Judge Weisel, a witness for the Government, clearly proves,—and the fact now exists independently of individual proof,—that the whole rebel army had left that part of Maryland. The accused was as free to visit Hagerstown, as he was to go to Frederick

It is proved by A. K. Stake, a Government witness, that the accused did not loiter idly about the streets of Hagerstown.

This witness, who had long been connected with the Canal, met the accused on the following day, and the injuries, which the Canal had experienced, were the subjects of conversation. On the following day, July the 3d, 1863, the witness, A. K Stake, again met the accused, who was then on his way to Dam No. 5, already referred to, to examine the condition of the Canal in that neighborhood.

It is in proof that the accused remained in that secluded region until the mid-day of July the 6th, 1863.

It is not pretended that the country in the immediate vicinity of Dam No. 5, was in rebel occupation. So free was it from such intrusion, that it is in proof that individual soldiers, attached to the United States cavalry, were there wholly unmolested, going and coming at their pleasure. The only visit of the rebels to that point having been when the accused was not there; and this visit consisted only in the passing through of a small squad of rebel cavalry, in charge of a few horses which they had seized.

The accused endeavoured to give the whole history of his three days life at Dam No. 5, and of the purpose and intention

of his visit, but the Commission was of the opinion that the inquiry was not admissible.

The second specification of the second charge sets forth that the accused "between the first and fifteenth days of July, 1863," was engaged secretly in giving intelligence to the authorities of the so called confederate states." The accused, therefore, thought that he had the right to show the perfect innocence of his conduct during the three days alluded to, as a partial answer at least to the grave charge thus made against him. The effect of the rulings of the Commission however, as disclosed by the record, tended to a contrary conclusion; and the result is, that the accused has not been able to explain the legitimate object, which carried him to that point on the Potomac river, by the way of Hagerstown. For it is in proof that the accused had at that time, by reason of the interruption to travel on the Baltimore & Ohio Rail Road, no other way of reaching Dam No 5, than by the route, which he pursued through Hagerstown.

It appears, also, from the testimony of A. K. Stake, a Government witness, that the accused stopped at his house, which was some two or three miles distant from Hagerstown and on the road from Dam No. 5 to Hagerstown, on the afternoon of July the 6th, 1863. He had no other way back than by this route, on his return to Hagerstown.

There had been some skirmishing at Hagerstown on that afternoon, and when the accused arrived at Stake's house, the firing which had been heard was the subject of conversation in the family. It is in proof that the accused was anxious to know whether any risk was incurred by going into Hagerstown. Mr. Stake told him that he thought not, because he had been there in the morning, and the place was occupied by United States troops. To give the accused more assurance of the propriety of going to the town, the witnessed accompanied him in his carriage. The two found Hagerstown in great excitement, and some skirmishing was then going on in the suburbs.

After a little while, the witness learned that the rebel force engaged in the skirmish, had driven the Union troops from the town; and he resolved to return to his own family in the country.

What ought the accused to have done? No one in that

section of the country knew the real result of the great battles which had been fought at Gettysburg, or knew that the force of rebels, then entering Hagerstown, was certainly the advanced corps of Lee's retreating army.

The accused saw that the refugees who had left Hagerstown, when Lee's army entered it, on the march to Pennsylvania, and who had returned before he came to Hagerstown, remained quietly where they were, and he knew no better course to pursue.

There was little space for any reflection on the subject. As the enemy entered and occupied the town, their pickets were thrown out; and the condition of the accused became from that moment, identical with that of every other citizen of Maryland, then within the limits of Hagerstown.

The next day, which was the 7th of July, 1863, masses of the rebel army moved up, and the pickets were extended so as to include the country house of A. K. Stake; and on the day following, which was the 8th of July, 1863, the country around for a space of fifteen miles, was in rebel occupation.

A. K. Stake testifies, as has been said, that on July the 7th, 1863, the rebel lines were extended some distance beyond his house, and he says, that on the day last named, the accused came to his house, and returned there again from Hagerstown, on the following day, which was the 8th of July, 1863.

The testimony given by Judge Weisel, as to certain statements of the accused made to him, relates to the following day, the 9th of July, 1863.

Judge Weisel has not only substantially stated what the accused said frankly and unreservedly to him, but he has also stated what was substantially the facts of the case, as did A. K. Stake also, in that part of his testimony, which bore upon the same period of time.

It is perfectly true, that on the 8th day of July, 1863, as the accused was moving about Hagerstown, he met Charles Marshall, who had formerly been a Lawyer in Baltimore City, and as such known to the accused.

Marshall stopped the accused and spoke to him. Some little general conversation took place, in which the accused was made acquainted with the fact that Marshall held the rank of a Major in the rebel army.

The accused had seen on his visit to Dam No. 5, some part at least of the damage which had then been inflicted. He had made arrangements with the Canal officers, at Dam No. 5, to have these injuries repaired, as both he and A. K. Stake thought could be done with safety. And he had returned to Hagerstown, to find the rebels returning into Virginia, by a route, which would enable them to complete the destruction they had commenced on the Canal.

The accused thought himself authorized to remonstrate against a repetition of the damage already inflicted on the Canal; and he did so.

It is perfectly true that the the accused, acting upon the impulse of the moment, did not consider what the law of war authorized him to do in such a case.

But now that such a conversation has taken place, and is beyond recall, the accused submits to this Honorable Commission, that he was justified, by the law of war even, in remonstrating with the enemy against the wanton destruction of any property belonging to himself, or to a fellow citizen, or in any wise committed to his charge.

Before parting with the said Marshall, it occurred to the accused that he might, at some time, while thus detained within the rebel lines, be molested; and as it was generally known in that section of the State that the accused held the privileges accorded him by General Orders No. 44, the accused was certainly anxious to protect himself from arrest, imprisonment, or removal from the State as a prisoner.

Nothing, however, was said on this subject on the 8th of July, 1863, but the said Marshall did, in reply to an inquiry of the accused, tell the accused that he was encamped on Mohler's farm, a short distance from Hagerstown.

On the following day, the 9th of July, 1863, the accused was asked to drive with J. Dixon Roman to a farm house, a few miles from Hagerstown, where Mr. Roman said he wished to go, to secure certain provisions for his househould, as there was then some scarcity in Hagerstown.

When they arrived at the farm house, the farmer, after making arrangements to supply Mr. Roman, asked that gentleman to assist him in making the effort to reclaim some of his property, which the rebels had taken.

Mr. Roman cheerfully promised to do whatever he could; and on the way home it was suggested that the carriage should stop at Mr. Marshall's quarters, in order that Mr. Roman might see what could be done.

It is quite certain that the accused also had grown uneasy as the rebel lines were extended around the place, and was anxious to protect himself from annoyance as far as was possible.

What follows has been made the subject of grave accusations against the accused; but he thinks this Commission will perceive, from the evidence which has been given in this case, how little he knew or dreamed of any impropriety.

On the return from the farm house, the carriage was stopped at the place, which the said Marshall had indicated as his quarters on the preceding day. As the accused remembers, Mr. Roman stated the business of his farmer, and some conversation occurred on that point. The accused certainly does not recollect what it was, but is only assured that it was in relation to no matter that he need fear at any time to speak of, if he recalled it.

The accused then asked the said Marshall for a safeguard to protect him from molestation. The said Marshall told the accused that he had no power to give him a valid safeguard, as he did not discharge any provost duties, but that he would give him a paper, which, if he was arrested would probably cause him to be brought to the notice of the said Marshall.

The tenor and language of that paper have been, as far as the accused recollects, accurately stated by A. K. Stake, to whom the accused showed it, as he did to other persons, without the slightest hesitation.

It read, "The bearer of this, Alfred Spates, has permission to pass within the Confederate lines, upon his parole of honor, not to divulge any thing in regard to army movements."—Signed, "CHARLES MARSHALL, *Major and A. D. C.*"

As the accused has said, he knew nothing of the law of war on this subject at the time. He only knew that a hostile army had taken possession of the town, in which he was; and he supposed that those in charge of that army would use their physical power in controlling the movements of every citizen, or stranger, within the military lines which they established.

His attention has since been called to General Orders of the War Department, No. 100, issued April 24, 1863. As these General Orders, in the parts which the accused now quotes are declaratory only of the general law of war, and are applicable to all belligerents, the accused cites them for his justification in receiving the safeguard in question.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD.

SECTION I.

Martial law—Military jurisdiction—Military necessity—Retaliation.

1. A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

3. Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

7. Martial Law extends to property and to persons, whether they are subjects of the enemy, or aliens to that government.

26. Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

134. The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

It certainly does seem to the accused, that these rules thus laid down by the War Department, clearly exonerate the accused from censure, or criminality in receiving the paper in question, which, moreover, was no pass whatever from General Lee, as is alleged in the charges and specifications.

The accused was subject to an "occupying military authority," (s. 3,) and owed "strict obedience" (s. 26,) to such military authority as long as it should "hold sway over the district or country, at the peril of his life," (s. 26.) See General Orders, No. 100.

His case, as a Marylander, residing elsewhere than in Hagerstown, but found in Hagerstown by the rebel army on its occupation of the place, was precisely that of a citizen of Hagerstown. He was an "inhabitant" in the sense of section 1, of General Orders, No. 100.

As the accused and Mr. Roman left the said Marshall's tent, they saw at the distance of 50 or 60 yards from it, another tent, with an officer seated outside, and several persons around him. The road or path which Mr. Roman, the accused and the said Marshall were taking towards Roman's carriage, on the highway, led near this tent; and Mr. Roman asked who the officer was. Marshall said it was General Lee; and, as we drew near the group, he stopped,—said something upon a different matter to that officer, and named our names. We were looked at, and some casual remark was addressed to us, as we thus stood for five or six minutes in the group outside of the tent, observing the scene certainly, with curiosity. Among those present, the accused recollects, was a Catholic Clergyman, and some four or five others, if not more, who were citizens, the accused understood, from the neighborhood.

Immediately after this brief pause, the said Marshall separated from Mr. Roman and the accused; and the two last returned to Hagerstown.

Judge Weisel has told you how Mr. Watts, a friend of his, and a citizen of Hagerstown, and also a Government witness, who had known this General Lee, in former years, felt himself at liberty to talk with General Lee. Judge Weisel is perfectly correct in saying, that the accused spoke of his brief visit to the place where Lee's tent was pitched, without the slightest reserve.

It did not occur to Judge Weisel, to censure his own friend; and he has himself stated to the Commission, that he did not attach any importance to what the accused told him of his own visit.

The accused was perfectly conscious that neither to the said Marshall, nor to General Lee, nor to any other person in, or connected with the service of Lee's army, when it occupied Hagerstown, or the country around, did he say one word which could be tortured into information, or intelligence; or which placed him, for one moment, in any other attitude, than that of a perfectly loyal citizen.

It is proved in this case that the rebels went into line of battle a short distance from Hagerstown, on July the 10th, 1863; and no intercourse took place between their army and the people in Hagerstown, until that army finally retreated.

On July the 14th, 1863, it was understood that the rebels had crossed the river; and the accused thought he might with safety go to Williamsport, to see what was the condition of the canal at that point. Judge Weisel accompanied him. As they approached Williamsport, Judge Weisel and the accused encountered columns of United States' troops, moving on that town; and when they entered it with these troops, they found that the rebels had crossed the river.

This is a plain narrative of the facts, upon which the accused stands here this-day arranged for traitorous practices.

No fact has been proved against him, or could be proved against him, except that he was in Hagerstown when the rebels entered and took possession of that place, and that he took what he thought were proper and legitimate means to provide against personal annoyance and arrest.

If his anxiety for the safety of the canal led him into conversations to which the slightest blame can attach, he can now only regret the occurrence; but he earnestly protests against all imputation of criminality to his conduct.

If he had not the right, when he was in reality a prisoner at large in a hostile camp to indulge the curiosity of a moment, he can now only regret its indulgence, but he earnestly protests against the idea that such an action was criminal.

Had the accused been permitted to cross-examine the witnesses for the Government on these points, he could have shown that every one of them had as much intercourse, as he had, with rebel officers, during the occupation of Hagerstown; and

that many of them had received and used precisely the same description of passes, and from a more regular authority.

The accused would have proved this, not to assail their loyalty, or to charge any criminality on such witnesses, for he doth not believe them to be disloyal, or hold such acts to have been criminal. He would have proved these matters simply as facts showing the admixture of the rebel army in the town, and the rebel regulations as to passes at that time in the only way he could. He was not allowed to do this.

The accused has deemed it due to himself to offer to this Commission general evidence as to his loyalty.

The position of the Canal, and the military services required by the Government from its officers, have brought the accused more particularly under the notice of those officers of the army, who are connected with the Department of West Virginia.

One of these,—the Provost Marshal of General Kelly's Department, has appeared here and testified fully. The accused regrets that the exigencies of the service did not permit him to procure the attendance of others. He has no hesitation in saying that he knows that all such officers who know him, from the General there commanding to the lowest subaltern, would freely vindicate his reputation from the charge of disloyalty made against him.

For the rest,—not desiring to weary the patience of this Commission, but yet resolved to supply all the evidence, which the intimations made against him seemed to render necessary,—the accused has been satisfied to rely upon the testimony of men of undoubted loyalty, who exercise a strong influence in Western Maryland, and who have known him for years.

The accused is conscious of the misfortune which subjects him to a trial so far distant from his home; and which deprives him of the benefit of that home sympathy and confidence, which he would otherwise enjoy, and which, in the town of Cumberland, he knows he can command among its loyal people.

The accused cannot close his defence without the remark, that he is conscious that the bitterness and evils of party patronage, adhering even to the Union party of Maryland, with which he has always acted, has had much to do with the asperity of

feeling manifested towards him since he has been a prisoner in the custody of the United States.

The members of this Commission are strangers to these causes of dissension; but they ought not to overlook them. The accused is, however, fully persuaded that he can commit his cause to their hands with a full reliance upon their sense of justice, and upon their honor as officers.

No prosecution can take from the accused the sense that he has always, in his sphere, performed his duty fully and loyally to the Government of the United States; and that he stands this day unrebuked by his own conscience for any act hostile to its interests.

In thought and intent,—in word and deed,—he has been free from offence.

ALFRED SPATES.

C. J. M. GWINN,
Of Counsel.